



California Fair Political Practices Commission

September 29, 1988

Cindy Rambo
Executive Director
State Board of Equalization
1020 N Street
P.O. Box 942879
Sacramento, California 94279-0001

Re: Your Request for Advice
Our File No. I-88-272

Dear Ms. Rambo:

You have written on behalf of the members of the State Board of Equalization seeking advice regarding various mass mailings sent out by the elected board members.

QUESTION

Are various mailings to taxpayers, signed and sent out by members of the Board of Equalization, exempt from the mass mailing restrictions contained in Proposition 73 as constituting mailings sent to persons subject to a governmental program under 2 California Code of Regulations Section 18901?

CONCLUSION

Absent a showing that the name and signature of the individual board members are legally required for the mailings to be legally effective, the mailings which you have described are not exempt from the mass mailing restrictions as implemented by the emergency regulation, 2 California Code of Regulations Section 18901.

FACTS

You have forwarded copies of several types of mass mailings which are regularly sent by the members of the State Board of Equalization (the "Board"). Copies of these exhibits are attached to and made a part of this letter.

The first type of mass mailing deals with the release of security deposits and surety bonds held by the Board. Exhibit A1 is a form letter signed by a boardmember. It informs a taxpayer that the Board will release the taxpayer's security deposit. Exhibit A2 is a similar letter which informs the taxpayer that the Board will not require renewal of the taxpayer's surety bond.

A second type of form letter relates to the conduct of Board audits of taxpayers. Examples of this type of form letter are attached as Exhibits B1 and B2. These form letters ask taxpayers to fill out and return to the boardmember a confidential audit survey postcard included with the letter. The letters also inform the taxpayers what steps they can take if they disagree with the Board's audit findings.

You believe that the fact that the audit survey postcards are returned to an elected member of the Board, rather than Board staff, encourages a higher response rate than might otherwise occur.

A third type of form letter announces Taxpayer Assistance Days, which are meetings held by the boardmember and Board staff with taxpayers. These form letters invite taxpayer attendance at such meetings. Examples of this type of form letter are attached as Exhibits C1 and C2.

These types of form letters are sent only to taxpayers registered with the Board and subject to the Sales and Use Tax Law. They relate to matters affecting those taxpayers or to providing those taxpayers with assistance.

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides that no mass mailing shall be sent at public expense. (Section 89001.) The Commission has determined that the intent of the voters in adopting Proposition 73, which amended Section 89001, was to prevent elected officers from using public funds to send out newsletters and other mass mailings. (Regulation 18901, adopted as an emergency regulation, filed August 8, 1988; and Raye, et al. Advice Letters, No. A-88-220, copies enclosed.)

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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Regulation 18901 permits certain types of mass mailings to be sent by government entities at public expense. Subdivision (c) of the regulation provides:

(c) A mass mailing is not prohibited by Government Code Section 89001 if less than 200 pieces of mail are sent in a calendar month, or if the mailing consists only of:

- (1) Press releases sent to the media;
- (2) Mailings sent in the normal course of business from one governmental entity or officer to another governmental entity or officer;
- (3) Mailings sent in connection with the payment or collection of funds by the agency;
- (4) Mailings to persons subject to a government program administered by a governmental officer when such mailings are essential to the functioning of the program; or
- (5) Mailings required by statute, ordinance or court order.

(Emphasis added.)

You have urged that the attached mailings fall within the exemption set forth in subdivision (c)(4). We cannot agree. While the mailings in Exhibits A1, A2, B1 and B2 may be essential to the functioning of the Board's programs, we do not believe that the signature and name of the elected boardmember at the bottom of the correspondence is legally required or essential to the functioning of the program.

A similar issue was addressed under the previous regulation and statute. The Commission held that the Secretary of State's name and signature could appear in the ballot pamphlet in the certificate of correctness, which was required by law. (Section 88005(d).) However, a signed letter to voters, which was not required by law, could not be included during the period of the former prohibition. (In re Miller (1978) 4 FPPC Ops. 26, No. 77-032, copy enclosed.) We believe the reasoning in the Miller Opinion is correct and we apply it by analogy here.

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You have made reference to Section 15623 which requires the elected members of the Board to investigate the administration, enforcement, and operation within their districts of the law which the Board administers. However, Section 15623 further provides:

Each such member may appoint a deputy to assist him in the performance of his duties under this section....

Consequently, it is entirely possible and proper for the deputy to sign the correspondence exemplified by Exhibits B1 and B2.

As for the correspondence exemplified by Exhibits A1 and A2, it would seem entirely permissible and proper for those types of letters to be signed by yourself as Executive Director of the Board. The stationery could be the Board stationery as used in Exhibits A1 and A2, which lists the Board members in the standard letterhead or logotype. (Regulation 18901(b).) However, the stationery used in Exhibit B1 would not appear to meet that standard.

Lastly, the announcements of the Taxpayer Assistance Days do not appear to meet any of the standards for allowing mention of the elected officers' names. Such announcements could be sent out over a deputy's signature, so long as they do not mention the elected officer's name or title. Standard agency stationery, as discussed above, could be utilized.

In conclusion, it is our view that none of the mailings which you have enclosed is permissible if 200 or more are sent in a calendar month. It should be stressed that this interpretation is based upon past Commission advice and opinions and on the emergency regulation.

The Commission will be noticing a permanent regulation to implement the provisions of Section 89001. That regulation will address many policy questions raised by the implementation of Proposition 73's mass mailing restrictions. The Board may wish to comment on the proposed regulation and participate in the process of adoption of the permanent regulation.

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If you have questions regarding this letter, you may reach our office at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, appearing to read "John G. McLean", written over a horizontal line.

By: John G. McLean
Counsel, Legal Division

DMG:JGM:ld

Enclosure